



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 4, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0206

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	15.260 - Collision Investigations 2. Officers Take Collision Reports for all Mandatory Reportable Collisions	Sustained
# 2	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Sustained

Imposed Discipline

Resigned Prior to Proposed DAR – Discipline

Named Employee #2

Allegation(s):		Director's Findings
# 1	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained (Training Referral)
# 2	5.140 - Bias Free Policing 5. Employees will Call A Supervisor in Response to Allegations of Biased-Based Policing	Not Sustained (Training Referral)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that Named Employee #1 failed to complete a mandatory report and did not sufficiently investigate a collision and possible DUI. It was further alleged that Named Employee #2 did not investigate a potential domestic violence assault and that he did not report an allegation of biased policing to a supervisor.

SUMMARY OF INVESTIGATION:

The Complainant's car was hit by another vehicle. The Complainant called 911 and Named Employee #1 and Witness Officer #1 (WO#1) responded to the scene. The officers determined that a vehicle belonging to the Subject had collided with the Complainant's parked vehicle. Another male was at the scene but walked away prior to officers speaking with him. The Complainant relayed to NE#1 her belief that the Subject was intoxicated. NE#1 asked her if she saw the Subject exit his vehicle and she said that she did not. NE#1 facilitated the exchange of information between the Complainant and the Subject but did not complete a report. He told the Subject that it appeared that the Subject was intoxicated and that the only reason the Subject was not being arrested was because no one saw him driving the vehicle. However, NE#1 cited the Subject for inattentive driving.



The Complainant later contacted the Southwest Precinct and complained concerning what she perceived to be a lack of investigation on NE#1's part. Named Employee #2 (NE#2) – who was then assigned to the Traffic Section – was dispatched to the Complainant's home. He spoke to the Complainant about what occurred. She expressed her frustration to NE#2 and said: "[the Subject] was drunk and I'm pissed that they didn't do a DUI like honestly I feel like he was white and I truthfully feel like if that had been a black man they would have fucking been all over it like DUI all this shit." NE#2 responded: "I don't know about that but I'm gonna disagree on that part." Prior to leaving, NE#2 informed her that her tabs were expired.

NE#2 then went to the Subject's residence. He spoke with the Subject about the collision. At one point, NE#2 noticed a red mark on the Subject's face. He asked if that mark was from the collision. The Subject pointed his hand upwards and said: "No, he hit me." NE#2 asked the Subject whether he wanted a report concerning his allegation and the Subject said that he did not and wanted to focus on the collision. NE#2 did not conduct any further investigation concerning the statement made by the Subject and did not complete a report regarding it.

A Southwest Precinct Sergeant later flagged this case for the Watch Lieutenant. The Watch Lieutenant reviewed the Body Worn Video (BWV) and determined that the Complainant's car clearly incurred more than \$1,000 worth of damage and, as such, that NE#1 should have completed a report. The Watch Lieutenant also identified NE#2's potential failure to identify a bias complaint, NE#2's lack of thorough investigation into the potential allegation of domestic violence (DV) assault, and the lack of a comprehensive investigation by NE#1 and WO#1 into the collision and possible DUI. This investigation ensued.

OPA alleged that NE#1 may have failed to fully investigate the collision and DUI, including failing to complete a mandatory report. OPA did not include WO#1 as an involved employee as NE#1 was the primary officer on the call, not WO#1. OPA further alleged that NE#2 did not report an allegation of bias and did not comprehensively address the possible DV allegation. As part of its investigation, OPA interviewed NE#2. OPA attempted to interview NE#1, but he resigned prior to the completion of this investigation and did not participate in an interview.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

15.260 - Collision Investigations 2. Officers Take Collision Reports for all Mandatory Reportable Collisions

SPD Policy 15.260-POL-2 requires that a report be completed for all mandatory reportable collisions. A mandatory reportable collision includes where the apparent damage to the vehicle is \$1,000 or more, where a driver is suspected of being under the influence of drugs or alcohol, or where "enforcement action is taken against one or more of the parties involved." All three of these criteria were met here and, given this, NE#1's failure to complete a report violated policy.

First, the Watch Lieutenant concluded that the damage was clearly in excess of \$1,000. From a review of the BWV, OPA concurs. Notably, there was extensive damage to the left rear quadrant of the car, with the bumper ripped off and significant dents and scuffs.

Second, as NE#1 said at the scene, he believed that the Subject was intoxicated even if he felt that he could not prove it. The policy states that all that is required for the report is that a driver is "suspected" of being intoxicated, not that there needs to be probable cause to arrest for that offense.



Third, NE#1 took enforcement action against the Subject when he cited him for inattentive driving. As such, this is another reason why a report was required.

Given that the lack of a report violated policy, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

SPD Policy 15.180-POL-1 requires that officers conduct a thorough and complete search for evidence when performing investigations. The failure to do so violates policy.

OPA finds that NE#1's investigation fell short of the Department's expectations in at least two notable respects.

First, NE#1 clearly believed that the Subject had been driving drunk and discussed this with him, warning the Subject not to do so in the future. However, prior to telling the Subject that he was not going to be arrested because he could not be placed in the driver's seat, NE#1 neglected to actually ask the Subject whether he had been driving. Notably, early in their contact, the Subject told NE#1: "It's not my car, I just borrowed it from a friend." This suggests that the Subject was driving but NE#1 failed to ask any follow up questions to discern whether this was the case. OPA cannot understand why this was not done. Had the Subject said no, NE#1 would have been in the same place as he ended up. In OPA's perspective, this was a required evidentiary step that NE#1 did not perform.

Second, NE#1 was aware that there was a witness at the scene who had presumably been with the Subject; however, NE#1 asked no questions of this individual and allowed him to leave the scene. NE#1 also could have queried the witness concerning whether the Subject was driving and the failure to do so caused the investigation to be deficient.

Generally, OPA is reluctant to second guess in the moment investigatory decisions made by officers. That being said, the failures here were so significant that they yielded an inadequate search for evidence in violation of policy. In reaching this conclusion, OPA notes that this was not an insignificant case – indeed, the Subject had driven drunk and caused serious damage to the Complainant's vehicle. NE#1 should have done more to investigate it.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

This allegation was classified against NE#2 based on his lack of follow up on the Subject's report of a possible DV assault.

At his OPA interview, NE#2 explained that he did not believe that the Subject's statement was sufficient, standing alone, to establish a DV assault necessitating investigation. NE#2 said that, at the time the statement was made, the Subject pointed his finger up, not at a person or towards the inside of his residence. NE#2 opined that, had the



Subject done so, he likely would have identified the potential of a DV assault. NE#2 indicated that he took no further action because the Subject did not want a report to be written about the assault.

While OPA does not quibble with NE#2's interpretation of the statement and the Subject's hand movements, OPA believes that he still should have further explored this determine whether an investigation was required. All that would have included was a couple of follow up questions to explore who engaged in the assault, whether it was DV, and when the assault occurred.

The above being said, OPA concludes that retraining is the appropriate result here for two reasons. First, the Subject clearly stated that he did not want a report and appeared disinterested in participating in an investigation into the assault. Second, NE#2 was already counseled by his chain of command concerning this matter and appears to have been receptive to that training.

As such, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2's chain of command should discuss his investigation with him. He should be counseled to follow up on potential allegations of assault, regardless of whether or not the subject is interested in a report. As retraining and counseling has already been provided, whether to take further steps in this regard is within the discretion of the chain of command. Any counseling and associated retraining that is provided should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #2

5.140 - Bias Free Policing 5. Employees will Call A Supervisor in Response to Allegations of Biased-Based Policing

SPD Policy 5.140-POL-5 requires that, when officers become aware of an allegation of biased policing, they call their supervisor to report it. This is purposed to facilitate the supervisor coming to the scene to conduct a contemporaneous investigation into the allegation.

As indicated above, while NE#2 was speaking with the Complainant, she asserted that, had the Subject been black, he would have been arrested for DUI by NE#1. NE#2 disagreed with her statement but took no further action with regard to it. Specifically, he did not notify a supervisor of it and, as such, no investigation was conducted concerning the bias allegation.

During his OPA interview, NE#2 stated that, at the time, he did not believe that he was required to report an allegation of bias to a supervisor when the allegation was made against other officers.

While OPA has no doubt that this was a good faith belief on NE#2's part, it was wrong based on the plain language of the policy. The policy does not differentiate between allegations of bias against the officer who hears it versus an allegation against other officers. It simply directs that officers with report any and every allegation of biased policing that they become aware of to a supervisor.



Even though OPA finds that NE#2 acted inconsistent with policy when he did not report the allegation of bias, OPA understands how he could have been confused under the circumstances. Indeed, OPA has not seen many cases like this one. Moreover, as with Allegation #1, OPA notes that he has already received retraining and counseling concerning this matter and appeared to be receptive to this. As such, instead of imposing a Sustained finding, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2's chain of command should discuss his failure to report the Complainant's allegation of bias. He should be reminded that any allegation of bias must be timely reported, whether made against him or against another officer. As retraining and counseling has already been provided, whether to take further steps in this regard is within the discretion of the chain of command. Any counseling and associated retraining that is provided should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**